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UNITED STATES OF AMERICA, et al.	)	
Plaintiffs,	)	
	)	
v.	)	Civ. Act. Nos. 86-1094, 92-6119, 99-4835
	)	(Consolidated)
NATIONAL RAILROAD PASSENGER	)	
CORPORATION,	)	
CONSOLIDATED RAIL CORPORATION,	)	)
SOUTHEASTERN PENNSYLVANIA	)	
TRANSPORTATION AUTHORITY	)	)
Defendants/Third Party Plaintiffs,	)	
	)	
v.	)	
	)	
PENN CENTRAL CORPORATION,	)	
Third Party Defendant.	)	)
	)	

## CONSENT DECREE

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Third Party Defendant.	)	)
	)	

## I. BACKGROUND

WHEREAS, the Defendant Penn Central Corporation, now known as American Premier Underwriters (“Settling Defendant”) does not admit any liability to Plaintiff arising out of the transactions or occurrences alleged in the Complaint.

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this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith, that settlement of this matter will avoid prolonged and complicated litigation between the Parties, that the costs incurred by the United States that are being reimbursed under this Consent Decree are necessary and consistent with the National Contingency Plan and that this Consent Decree is fair, reasonable, and in the public interest.

**THEREFORE**, with the consent of the Parties to this Decree, it is **ORDERED, ADJUDGED, AND DECREED**:

## II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. §§ 9607 and 9613(b), and also has personal jurisdiction over the Settling Defendant. Solely for the purposes of this Consent Decree and the underlying Complaint, Settling Defendant waives all objections and defenses that it may have to jurisdiction of the Court or to venue in this District. Settling Defendant shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

## III. PARTIES BOUND

2. This Consent Decree is binding upon the United States, and upon Settling Defendant and its successors and assigns. Any change in ownership or corporate or other legal status, including but not limited to, any transfer of assets or real or personal property, shall in no way alter the status or responsibilities of Settling Defendant under this Consent Decree.

## IV. DEFINITIONS

3. Unless otherwise expressly provided herein, terms used in this Consent Decree that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meanings assigned to them in CERCLA or in such regulations. Terms used in this Consent Decree that are defined in other federal statutes or regulations promulgated thereunder shall have the meanings assigned to them in such statutes or regulations. Whenever terms listed below are used in this Consent Decree or in any appendix attached hereto, the following definitions shall apply:

a. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601, *et seq.*

b. "Consent Decree" shall mean this Consent Decree and its appendix attached hereto. In the event of conflict between this Consent Decree and the appendix, the Consent Decree shall control.

c. "Day" shall mean a calendar day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the

period shall run until the close of business of the next working day.

d. "DOI" means the United States Department of the Interior and any successor departments, agencies, or instrumentalities of the United States.

e. "DOJ" shall mean the United States Department of Justice and any successor departments, agencies, or instrumentalities of the United States.

f. "EPA" shall mean the United States Environmental Protection Agency and any successor departments, agencies, or instrumentalities of the United States.

g. "EPA Hazardous Substance Superfund" shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

h. "Future Response Costs" shall mean all costs incurred by EPA or DOJ on behalf of EPA at or in connection with the Site after June 2, 2003, including, but not limited to: direct and indirect costs, including, but not limited to, payroll costs, contractor costs, travel costs, laboratory costs that the United States incurs within the definition of Future Oversight Costs, and costs incurred by the United States in undertaking administrative functions, including, but not limited to, the preparation of an explanation of significant differences, costs incurred in securing or assisting to secure access or institutional controls, costs incurred in responding to an emergency situation, costs incurred in the event the United States takes over any or all of the activities required to be performed by Settling Defendant pursuant to the *Administrative Order for Remedial Design and Remedial Action* Docket No. III-96-89-DC ("Order"), costs incurred in reviewing the Remedial Action performed pursuant to the Order, as required by Section 121(c) of CERCLA, 42 U.S.C. § 9621(c)(five year reviews), costs incurred in undertaking community involvement/ community information activities, and/or the costs incurred by the United States in enforcing the terms of this Consent Decree or the Order including, but not limited to, all litigation costs associated with such enforcement.

i. "Future Oversight Costs" shall mean that portion of Future Response Costs that EPA incurs in monitoring and/or supervising Settling Defendant's performance of the Remedial Action undertaken pursuant to the Order to determine whether such performance is consistent with the requirements of the Order, including costs incurred in reviewing plans, reports, and other documents submitted pursuant to the Order, as well as costs incurred in overseeing implementation of the Remedial Action undertaken pursuant to the Order; however, Future Oversight Costs do not include any other response costs included within the definition of Future Response Costs.

j. "Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject

to change on October 1 of each year.

k. "Natural Resources" means land, resident and anadromous fish, resident and migratory wildlife, biota, air, water, ground water, sediments, wetlands, drinking water supplies, and other such resources, belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States.

l. "Natural Resource Damages" means any damages recoverable by the United States on behalf of the public pursuant to CERCLA Section 9607(a)(4) and 9607(f)(1), 42 U.S.C. § 9607 (a)(4), (f)(1), for injury to, destruction of, or loss or impairment of Natural Resources at the Site as a result of a release of hazardous substances, including but not limited to: costs of Natural Resource damage assessment, oversight costs, costs of restoration, rehabilitation, or replacement of injured natural resources, or acquisition of equivalent resources, and compensation for loss of use, loss of intrinsic values, diminution or impairment of any other value of natural resources, and each of the categories of recoverable damages described in 43 C.F.R. § 11.15.

m. "Paragraph" shall mean a portion of this Consent Decree identified by an Arabic numeral or an upper or lower case letter.

n. "Parties" shall mean the United States and Settling Defendant.

o. "Past Response Costs" shall mean all costs, including but not limited to direct and indirect costs, that EPA or DOJ on behalf of EPA has paid at or in connection with the Site through June 1, 2003, plus accrued Interest on all such costs through such date, but does not include those costs reimbursed to EPA by the Rail Companies pursuant to the consent decree between the United States and the Rail Companies entered by the Court in this matter on April 20, 1999.

p. "Paoli Superfund Site Special Account" shall mean the special account established at the Site by EPA pursuant to Section 122(b)(3) of CERCLA and this Consent Decree.

q. "Rail Companies" shall mean the National Railroad Passenger Corporation, Consolidated Rail Corporation, and the Southeastern Pennsylvania Transportation Authority.

r. "Rail Yard" shall mean that portion of the Site, constituting approximately 28 acres, formerly used as a rail maintenance yard, located in Willistown and Treddyfrin Townships, Paoli, Chester County, Pennsylvania generally shown on the map included in Appendix A. The fence surrounding the Rail Yard shall serve as the boundary demarcation between the Rail Yard and the remainder of the Site.

s. "Section" shall mean a portion of this Consent Decree identified by a Roman

numeral.

t. "Site" shall mean the entire Paoli Rail Yard Superfund Site, encompassing the approximately 28-acre Rail Yard and the surrounding approximately 400-acre watershed, including, but not limited to the residential area; all located in Willistown and Treddyfrin Townships, Paoli, Chester County, Pennsylvania, generally shown on the map included in Appendix A.

u. "United States" shall mean the United States of America, including all of its departments, agencies, and instrumentalities.

## **V. PAYMENT BY SETTLING DEFENDANT**

### **4. Payments of Response Costs and Natural Resource Damages**

#### **a. Payment of Past Response Costs**

(i) Within 30 days of entry of this Consent Decree, Settling Defendant shall pay to the United States on behalf of EPA the sum of three million dollars (\$3,000,000.00.)

(ii) Within one year of the entry of this Consent Decree, Settling Defendant shall pay to the United States on behalf of EPA the sum of \$2,900,000.00 ( \$2,863,170.00 in principal + \$36,803.00 in interest).

#### **b. Payment of Future Response Costs**

Settling Defendant shall pay to the United States on behalf of EPA all Future Response Costs related to activities Settling Defendant is obligated to carry out pursuant to the Order that are not inconsistent with the National Contingency Plan. However, with regard to that portion of Future Response Costs designated as Future Oversight Costs, Settling Defendant shall not be required to pay an amount in excess of \$37,500.00 annually. On a periodic basis, the United States will send Settling Defendant a bill requiring payment that includes a cost summary, setting forth direct and indirect costs incurred by EPA, DOJ, and their contractors. Settling Defendant shall make all payments within forty-five (45) days of Settling Defendant's receipt of each bill requiring payment. Upon request by Settling Defendant the United States will provide supporting documentation for the requested costs.

#### **c. Payment of Natural Resource Damages**

Within 30 days of entry of this Consent Decree, Settling Defendant shall pay to the United States on behalf of DOI the sum of \$ 500,000 in settlement of Plaintiff's Natural Resource Damages claim.

5. The payments made pursuant to Paragraph 4 shall be made by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice account in accordance with EFT instructions provided to Settling Defendant following entry of the Consent Decree by the Financial Litigation Unit of the U.S. Attorney's Office in the Eastern District of Pennsylvania. Payments for EPA response costs shall reference EPA Region III and Site/Spill Identification Number 03J9, DOJ Case Number 90-11-2-152C, and civil action number 86-1094. Payment for Natural Resource Damages shall reference: Paoli-Valley Forge Site, NRDAR Account Number 14X5198, DOJ Case Number 90-11-2-152C, and civil action number 86-1094. Any payments received by the Department of Justice after 4:00 P.M. (Eastern Time) will be credited on the next business day.

6. At the time of each payment, Settling Defendant shall also send notice to DOJ, EPA, and DOI that payment has been made in accordance with Section XIII (Notices and Submissions). Notices shall reference DOJ case number 90-11-2-152C, civil action number 86-1094, and, as appropriate, EPA Region III and Site/Spill Identification Number 03J9, or DOI and the Paoli/Valley Forge Site, NRDAR Account Number 14X5198.

7. Within 30 days after the effective date of this Consent Decree, EPA shall establish a new special account, the Paoli Superfund Site Special Account, within the EPA Hazardous Substance Superfund. The total amount to be paid pursuant to Paragraph 4(a) and 4(b) shall be deposited in the Paoli Superfund Site Special Account. Ninety percent (90%) of the total amount in the Paoli Superfund Site Special Account shall be retained and used, at EPA's discretion to conduct or finance response actions at or in connection with the Site, including reimbursement of EPA's oversight costs, until such time that EPA approves the completion of the construction of that portion of the Remedial Action being implemented on the Rail Yard. After EPA approves the completion of the construction of that portion of the Remedial Action being implemented on the Rail Yard, all funds deposited or maintained in the Paoli Superfund Site Special Account may, at EPA's discretion, either be retained and used to conduct or finance further response actions at or in connection with the Site, including reimbursement of EPA's oversight costs, or be transferred by EPA to the EPA Hazardous Substance Superfund. Nothing in this paragraph shall be deemed to curtail EPA's authority to require additional remedial work at the Site as otherwise permitted by CERCLA and by the terms of this Consent Decree.

## VI. FAILURE TO COMPLY WITH CONSENT DECREE

8. Interest on Late Payments. If any Settling Defendant fails to make any payment under Paragraph 4 (Payment of Response Costs) by the required due date, Interest shall continue to accrue on the unpaid balance through the date of payment.

9. Stipulated Penalty.

a. If any amounts due under Paragraph 4 are not paid by the required date, Settling Defendant shall be in violation of this Consent Decree and shall pay to EPA as a



stipulated penalty, in addition to the Interest required by Paragraph 8, \$2,500.00 per violation per day that payment is late.

b. Stipulated penalties are due and payable within 30 days of receipt of the demand for payment of the penalties by EPA. All payments to EPA under this Paragraph shall be identified as "stipulated penalties" and shall be made by certified or cashier's check made payable to "EPA Hazardous Substance Superfund." The check, or a letter accompanying the check, shall reference the name and address of the party making payment, the Site name, the EPA Region and Site Spill ID Number 03J9, DOJ Case Number 90-11-2-152C, and civil action number 86-1094. Settling Defendant shall send the check and accompanying letter to:

EPA Superfund  
Mail to: U.S. EPA, Region III  
ATTENTION: Superfund Accounting  
P.O. Box 360515  
Pittsburgh, PA 15251-6515

c. At the time of each payment, Settling Defendant shall also send notice that payment has been made to EPA and DOJ in accordance with Section XIII (Notices and Submissions). Such notice shall reference EPA Region III and Site/Spill ID Number 03J9, DOJ Case Number 90-11-2-152C, and civil action number 86-1094.

d. Penalties shall accrue as provided in this Paragraph regardless of whether EPA has notified Settling Defendant of the violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day after payment is due and shall continue to accrue through the date of payment. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

10. If the United States brings an action to enforce this Consent Decree, Settling Defendant shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

11. Payments made under this Section shall be in addition to any other remedies or sanctions available to Plaintiff by virtue of Settling Defendant's failure to comply with the requirements of this Consent Decree.

12. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Consent Decree. Payment of stipulated penalties shall not excuse Settling Defendant from payment as required by Section V or from performance of any other requirements of this Consent Decree.

## VII. COVENANT NOT TO SUE BY PLAINTIFF

13. Covenant Not to Sue by United States. Except as specifically provided in Section VIII (Reservation of Rights by United States), the United States covenants not to sue or to take administrative action against Settling Defendant pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), to recover Past Response Costs, Future Response Costs, or Natural Resource Damages. With respect to Past Response Costs, this covenant not to sue shall take effect upon receipt by EPA of all payments required by Section V, Paragraph 4(a) (Payment of Past Response Costs). With respect to Future Response Costs, this covenant not to sue shall take effect upon receipt by EPA of all payments required by Section V, Paragraph 4(b) (Payment of Future Response Costs) and any amount due under Section VI (Failure to Comply with Consent Decree). With respect to Natural Resource Damages, this covenant not to sue shall take effect upon receipt by DOI of all payments required by Section V, Paragraph 4(c) (Payment of Natural Resource Damages). This covenant not to sue is conditioned upon the satisfactory performance by Settling Defendant of its obligations under this Consent Decree. This covenant not to sue extends only to Settling Defendant and does not extend to any other person.

## VIII. RESERVATIONS OF RIGHTS BY UNITED STATES

14. The United States reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendant with respect to all matters not expressly included within the Covenant Not to Sue by Plaintiff in Paragraph 13. Notwithstanding any other provision of this Consent Decree, the United States reserves all rights against Settling Defendant with respect to:

a. liability for failure of Settling Defendant to meet a requirement of this Consent Decree;

b. liability for costs incurred or to be incurred by the United States that are not within the definition of Past Response Costs, Future Response Costs, or Natural Resource Damages;

c. liability for injunctive relief or administrative order enforcement under Section 106 of CERCLA, 42 U.S.C. § 9606;

d. criminal liability; and

e. liability for Natural Resource Damages based upon (i) conditions with respect to the Site, unknown to the United States at the date of lodging of this Consent Decree, that result in releases or threatened releases of hazardous substances that contribute to injury to, destruction of, or loss of natural resources; or (ii) information received after the date of lodging of this Consent Decree which indicates that there is injury to, destruction of, or loss of natural resources of a type that was unknown, or of a magnitude significantly greater than was known to the United States at the time of lodging of this Consent Decree.

## IX. COVENANT NOT TO SUE BY SETTLING DEFENDANT

15. Settling Defendant covenants not to sue and agrees not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to Past Response Costs, Future Response Costs, Natural Resource Damages, or this Consent Decree, including but not limited to:

a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claim arising out of the response actions at the Site for which the Past Response Costs or were incurred, or Future Response Costs are incurred, including any claim under the United States Constitution, the Constitution of the Commonwealth of Pennsylvania, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or

c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to Past Response Costs, Future Response Costs, or Natural Resource Damages.

16. Nothing in this Consent Decree shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. 300.700(d).

## X. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION

17. Nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. The Parties expressly reserve any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action that they may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

18. The Parties agree, and by entering this Consent Decree this Court finds, that Settling Defendant is entitled, as of the date of entry of this Consent Decree, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), brought by any party other than the Rail Companies, for matters addressed in this Consent Decree. The "matters addressed" for purposes of Paragraph 18 of this Consent Decree are all response actions taken and to be taken at the site, and all response costs incurred or to be incurred and all Natural Resource Damages incurred at or in connection with the Site.

19. Settling Defendant agrees that, with respect to any suit or claim for contribution brought by it for matters related to this Consent Decree, it will notify EPA and DOJ in writing no

later than 60 days prior to the initiation of such suit or claim. Settling Defendant also agrees that, with respect to any suit or claim for contribution brought against it for matters related to this Consent Decree, it will notify EPA and DOJ in writing within 10 days of service of the complaint or claim. In addition, Settling Defendant shall notify EPA and DOJ within 10 days of service of any Motion for Summary Judgment, and within 10 days of service of any order from a court setting a case for trial, for matters related to this Consent Decree.

20. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other relief relating to the Site, Settling Defendant shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the Covenant Not to Sue by Plaintiff set forth in Section VII.

## XI. ACCESS TO INFORMATION

21. Settling Defendant shall provide to EPA, upon request, copies of all records, reports, or information (hereinafter referred to as "records") within its possession or control or that of its contractors or agents relating to activities at the Site, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Site.

### 22. Confidential Business Information and Privileged Documents.

a. Settling Defendant may assert business confidentiality claims covering part or all of the records submitted to Plaintiff under this Consent Decree to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. 2.203(b). Records determined to be confidential by EPA will be accorded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies records when they are submitted to EPA, or if EPA has notified Settling Defendant that the records are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such records without further notice to Settling Defendant.

b. Settling Defendant may assert that certain records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Defendant asserts such a privilege in lieu of providing records, it shall provide Plaintiff with the following: 1) the title of the record; 2) the date of the record; 3) the name, title, affiliation (*e.g.*, company or firm), and address of the author of the record; 4) the name and title of each addressee and recipient; 5) a description of the subject of the record; and 6) the privilege asserted. If a claim of privilege applies only to a portion of a record, the record shall be provided to Plaintiff in redacted form to mask the privileged information only. Settling Defendant shall retain all records that it claims to be privileged until the United States has had a reasonable opportunity to dispute the privilege claim.

and any such dispute has been resolved in the Settling Defendant's favor. However, no records created or generated pursuant to the requirements of this or any other settlement with the EPA pertaining to the Site shall be withheld from EPA on the grounds that they are privileged.

23. No claim of confidentiality shall be made with respect to any data, including but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or with respect to any other documents or information evidencing conditions at or around the Site.

## XII. RETENTION OF RECORDS

24. Settling Defendant shall preserve and retain all records now in its possession or control, or which come into its possession or control, that relate in any manner to response actions taken at the Site or the liability of any person under CERCLA with respect to the Site, for a period of ten years after the entry of this Consent Decree, regardless of any corporate retention policy to the contrary.

25. After the conclusion of the 10-year document retention period in the preceding paragraph, Settling Defendant shall notify EPA and DOI at least 90 days prior to the destruction of any such records, and, upon request by EPA or DOI, Settling Defendant shall deliver any such records to EPA. Settling Defendant may assert that certain records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Defendant asserts such a privilege, it shall provide Plaintiff with the following: 1) the title of the record; 2) the date of the record; 3) the name, title, affiliation (*e.g.*, company or firm), and address of the author of the record; 4) the name and title of each addressee and recipient; 5) a description of the subject of the record; and 6) the privilege asserted. If a claim of privilege applies only to a portion of a record, the record shall be provided to Plaintiff in redacted form to mask the privileged information only. Settling Defendant shall retain all records that it claims to be privileged until the United States has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in the Settling Defendant's favor. However, no records created or generated pursuant to the requirements of this or any other settlement with the EPA or DOI pertaining to the Site shall be withheld on the grounds that they are privileged.

26. Settling Defendant hereby certifies that, to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, reports, or information relating to its potential liability regarding the Site since notification of potential liability by the United States, or the filing of suit against it regarding the Site, and that it has fully complied with any and all EPA requests for information pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927.

## XIII. NOTICES AND SUBMISSIONS

27. Whenever, under the terms of this Consent Decree, notice is required to be given or a document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Defendants in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, EPA, and DOI.

As to the United States:

Chief, Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice (DJ # 90-11-2-152C)  
P.O. Box 7611  
Washington, D.C. 20044-7611

As to EPA:

Thomas A. Cinti (3RC42)  
Senior Assistant Regional Counsel  
U.S. Environmental Protection Agency, Region III  
1650 Arch Street  
Philadelphia, PA 19103

Docket Clerk (3RC00)  
U.S. Environmental Protection Agency  
1650 Arch Street  
Philadelphia, PA, 19103-2029

As to DOI:

Marcia Gittes, Esq.  
U.S. Department of Interior  
One Gateway Center, Suite 612  
Newton, MA 02458-2802

Bruce Nessler  
Restoration Fund Manager  
U.S. Department of Interior  
Natural Resource Assessment and Restoration Program  
1849 C Street, N.W. (#4449)  
Washington, D.C. 20240

#### XIV. RETENTION OF JURISDICTION

28. This Court shall retain jurisdiction over this matter for the purpose of interpreting and enforcing the terms of this Consent Decree.

#### XV. INTEGRATION/APPENDIX

29. This Consent Decree and its appendix constitutes the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Consent Decree. The Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Consent Decree. The following appendix is attached to and incorporated into this Consent Decree: "Appendix A" is the map of the Site.

#### XVI. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

30. This Consent Decree shall be lodged with the Court for a period of not less than 30 days for public notice and comment. The United States reserves the right to withdraw or withhold its consent to entry of this Consent Decree if the public comments regarding the Consent Decree disclose facts or considerations which indicate that this Consent Decree is inappropriate, improper, or inadequate. Settling Defendant consents to the entry of this Consent Decree without further notice.

31. If for any reason this Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of any party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

#### XVII. SIGNATORIES/SERVICE

32. The undersigned representative of Settling Defendant to this Consent Decree, and of the Assistant Attorney General for the Environment and Natural Resources Division of the United States Department of Justice, certifies that he or she is authorized to enter into the terms and conditions of this Consent Decree and to execute and bind legally such Party to this document.

33. Settling Defendant hereby agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree, unless the United States has notified Settling Defendant in writing that it no longer supports entry of the Consent Decree.

34. Settling Defendant shall identify, on the attached signature page, the name and address of an agent authorized to accept service of process by mail on behalf of that Party with respect to all matters arising under or relating to this Consent Decree. Settling Defendant hereby agrees to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including but not

limited to, service of a summons.

**XVIII. FINAL JUDGMENT**

35. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute the final judgment between and among the United States and the Settling Defendant. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

**SO ORDERED, THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2005.**

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**UNITED STATES DISTRICT JUDGE**



**THE UNDERSIGNED PARTIES** enter into this Consent Decree relating to the Paoli Superfund Site.

FOR THE UNITED STATES OF AMERICA

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